

**U.S. Department of Justice**

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*Eastern District of Pennsylvania*

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May 27, 2010

By Electronic and First Class Mail

Keith Mooney  
Counsel for City of Reading  
Barley Snyder LLC  
50 North Fifth Street, P.O. Box 942  
Reading, PA 19603-0942

Re: U.S. and PADEP v. City of Reading, PA  
Civil Docket No. 04-05696 (E.D. Pa) (JKG)

Dear Mr. Mooney:

The United States, on behalf of the United States Environmental Protection Agency (EPA) writes this letter to express significant concerns regarding the compliance by the City of Reading with the above captioned Consent Decree. This letter is for the purpose of outlining the Government's concerns prior to, but without any waiver of our rights to, invocation of the remedies set forth in the Decree including, but not limited to, stipulated penalties and contempt of Court.

As you know, the Decree settling the above captioned case was entered by the Court on November 7, 2005. In that Decree, the Court approved the binding commitments made by the City to accomplish a number of tasks so that the City could return to and remain in compliance with the Clean Water Act (CWA) and the Pennsylvania Clean Streams Law. With some exceptions noted below, the City has accomplished many improvements in the staffing, management, operation and maintenance of the wastewater treatment plant (WWTP). In addition, the City has done a good job in management of the Supplemental Environmental Project (SEP) to restore the Angelica Creek in the Angelica Park. That is why it was even more disturbing that the City of Reading appears to have violated terms and commitments set forth in the Decree.

The Consent Decree addressed the City of Reading's violations and long history of noncompliance with its NPDES permit and the Clean Water Act. As I am sure you are aware, the parties spent over two years negotiating the Consent Decree and agreeing on both the scope of injunctive relief, the penalty and the Supplemental Environmental Project. I personally met with the Reading City Council to answer their questions and support the City of Reading

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Administration in agreeing to this settlement. The Consent Decree at Paragraph 23 contains a generous schedule for replacement (January 15, 2010) and/or major rehabilitation of the wastewater treatment plant (September 15, 2012) in part in consideration of the financial position of the City of Reading. We approved Reading's original alternative selection to perform major rehabilitation at the WWTP by my letter dated April 28, 2006. We met again with the City on May 26, 2009 to hear and consider the City's request for an alternative selection and a modest extension of the construction schedule. Although both EPA and PADEP responded favorably to that May 2009 request, the City recently stopped responding to requests for more information necessary to conclude that discussion and/or a modification of the Consent Decree.

We understand from our conversation with Mr. Mooney that the city believes that two years without significant exceedance of its NPDES permit effluent limits demonstrates that no further injunctive relief is necessary. While that time period without such an exceedance may represent the results of short term improvements in management, staffing and operations required by Paragraphs 13-17 of the Decree, we do not agree this represents a material change that eliminates the need for significant long term relief. Based on both recent and historic inspections by EPA and PADEP, very significant improvements are necessary for both the WWTP and the collection system in the City of Reading.

In addition, it is our understanding that the City of Reading has not met the obligations to complete the sewer system evaluations or GIS mapping as required by Paragraphs 25-27 of the Decree. Please inform us of your plans to complete those obligations as soon as possible.

Moreover, as set forth in Paragraph 40 of the Decree, we agreed to allow Reading to continue the transfer of some sewer revenue funds for general fund purposes. The Decree provided that Reading would reduce its transfer from the 2003 sum of \$6,790,505 by \$750,000 for each calendar year until such time as the amount reached \$3 million. Our position was that excessive skimming of the sewer funds for the general fund did not provide enough resources to staff, operate and maintain the WWTP and collection system as required by the CWA and the Decree. We appreciated that the City of Reading was financially challenged and, as a result, made a reasonable accommodation in the Decree. Please note that Paragraph 64 of the Decree provides that "[u]nanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered 'force majeure' events."

As recently revealed by the City's quarterly report dated April 30, 2010, the City has been "borrowing" funds from the sewer revenue funds to be used in the general funds, with \$11 million being diverted in 2009. The City had not previously disclosed this information. The Decree does not provide for any such transfer including loans from the sewer revenue funds in excess of \$3 million and the current "borrowing" is another breach of the Decree.

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An additional concern is that it appears that the city is having its residents subsidize the cost of treating other municipalities' waste water. The Decree at Paragraph 40 notes that another relevant source of revenue for the City is the thirteen other municipalities that contribute wastewater to the Reading system and pay the City as provided in intermunicipal agreements. The City acknowledged during discussions in 2002-2004 that these intermunicipal agreements were out of date and generally did not provide the City revenue consistent with the fees charged to City residents. The City made a commitment to renegotiate those agreements. The Financial Analysis by Black and Veatch recently submitted (by your office) documents an enormous disparity between the wastewater fees charged to City residents of \$14.7 million in wastewater fees for treatment of 1.7 million gallons while the 13 municipalities collectively paid \$9.8 million for 187 million gallons. We understand that none of the 13 agreements have been renegotiated. Please clarify if this understanding is incorrect in any way.

In summary, the United States is evaluating the remedies to seek, including, but not limited to, seeking stipulated penalties and, if so, in what amount for these violations of the Decree.

To determine the next steps, please answer the following questions in writing to counsel:

1. Is the City withdrawing its May 2009 proposal for Decree modification? If so, what specifically is City's alternative proposal?
2. What is the City's current proposal with respect to the Treatment plant, and collection system issues?

While we are sympathetic to the City of Reading's conditions, that does not relieve the City's obligations to comply with the Decree and CWA. Please submit the City's written response to this letter within two weeks. Soliciting a written response from the City must not be construed as a waiver of any stipulated penalties that have accrued to date.

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Thank you for your cooperation in this matter. We look forward to continuing to work constructively with you in the future. If you have any questions, please call me at (215) 861-8282, or Christopher A. Day at EPA at (215) 814-2481.

Sincerely,

ZANE DAVID MEMEGER  
United States Attorney



Margaret L. Hutchinson  
Assistant United States Attorney  
Chief, Civil Division

cc: Jon Capacasa, EPA  
Christopher A. Day, EPA  
Ms. Lisa Trakis, EPA  
Gary Hepford, PADEP  
Randy King, PADEP